IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Bail Appl..No. 4552 of 2007()

PETITIONER/ACCUSED:

KALYANI, AGED 85 YEARS,
D/O. KUNHI, VADAKKE THIRUTHU VILAKATHU VEEDU,
PACHALLOOR DESOM, THIRUVALLAM VILLAGE.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS: STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4552 of 2007

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Dated this the 3rd day of August, 2007

ORDER

Application for anticipatory bail. Petitioner faces indictment in a prosecution for offence punishable under Sec.55(a) of the Kerala Abkari Act. Investigation is complete. Final report has already been filed. Cognizance has been taken. The learned Magistrate has registered committal procedure as C.P.No.134/2006 pending before the Judicial First Class Magistrate Court -II, Neyyattinkara. The summons received by the petitioner shows that the said proceedings arise from Thiruvananthapuram Excise Crime No.48/2005 but in the bail application the number of crime is 48/2006 of Thiruvallam Police Station. The petitioner submits that the Trivandrum Excise Crime No.48/2005 is the correct one. Let that controversy remains as it is. It is the undisputed case of all that the petitioner, a woman, is the accused in C.P.No.134/06 pending before the Judicial First Class Magistrate Court -II, Neyyattinkara.

2. The petitioner is a woman, aged 85 years, it is submitted. Cognizance has been taken. Summons was issued to the petitioner.

The petitioner could not appear on that date. Accordingly a warrant of arrest has been issued against the petitioner. The learned counsel for the petitioner submits that she is absolutely innocent. She is aged 85 years, it is submitted. The absence of the petitioner earlier was not wilful, but was on account of reasons beyond her control. The petitioner is now willing to appear before the learned Magistrate and seek regular bail but she apprehends that her application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor only submits that appropriate orders may be passed. The investigation having already been completed and committal proceedings having already been registered.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a

pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Certainly the petitioner's application for regular bail will have to be considered in the light of the decisions in **Sukumari v. State of Kerala (2001 (1) KLT 22).** and in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. The advanced age of the petitioner, she is alleged to be 85 years, will also have to be considered by the learned Magistrate after verifying her age as per records. In any view of the matter, I do not find any reason to invoke section 438 Cr.P.C and/or 482 Cr.P.C, in the facts and circumstances of the case. The petitioner

must appear and claim regular bail.

7. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. The petitioner must surrender before the learned Magistrate on or before 10.08.07. Till then the warrant of arrest issued against the petitioner shall not be executed.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE